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Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages

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PREPARATION AND ADOPTION OF A CONVENTION ON MARITIME LIENS AND MORTGAGES

Compilation of comments and proposals by Governments, and by intergovernmental and non-governmental organizations on the draft convention on maritime liens and mortgages

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I. INTRODUCTION

1. This document sets out the comments and proposals of non-governmental organizations on the draft convention on maritime liens and mortgages that were received between 15 February and 4 March 1993. In that period, comments were received from the following: International Association of Ports and Harbors (IAPH).

II. COMPILATION OF COMMENTS AND PROPOSALS

International Association of Ports and Harbors

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2. Ports throughout the world are the essential link in the transport chain for those involved in the business of international shipping. It is hoped that the new provisions to be decided for covering maritime liens and mortgages will facilitate:

- a well-balanced co-ordination between all activities related to the maritime community,

- the daily operating lives of merchant ships, as well as their initial acquisition.

3. Inasmuch as ports are directly concerned, it is essential to stress the following points:

(a) Whatever their status, the majority of ports are, in the present economic circumstances, a long way from being in a comfortable financial situation. Nor do they always, or even necessarily, have the solid public backing that would enable them to withstand the consequences of technical and financial difficulties. The interests which they represent include:

- those of all ships calling at the port, who expect modern and efficient services for which the costs must be equally shared between them;

- those of governments, who often devote a large part of their national resources to the heavy investments required by ports;

- those of their numerous partners in local industry or shipping in port towns, where the smooth running of economic activity depends on the regular flow of port traffic.

(b) The stakes involved in the smooth flow of port trade extend to a country's whole economy. In certain cases a single port, which may well be operating at near saturation level, may serve the whole country's economy, without there being any readily accessible alternative transport routes. The economy of land-locked countries can also depend on the smooth running of ports in neighbouring maritime countries. In addition, the customs duties levied on goods passing through the ports account for a major part of a nation's revenue.

4. IAPH emphasizes therefore that in these circumstances the following representations not only involve its ports but are also vital for the collective interest of whole communities.

(a) In the first instance, claims for port, canal and other waterway dues and taxes as well as pilotage fees and, indeed, all other levies made for services rendered in the port, should be secured by a high-ranking maritime lien on the vessel.

(b) Claims for wreck removal should equally be secured by a lien. The clause in article 5 as it stands is not acceptable to ports, especially those whose accesses can be totally blocked by a disabled vessel, which is frequently the case and notably in developing countries where the whole economy may depend upon a single port - or even a single deep water berth. Under the present lien ranking the costs of wreck removal are no longer included at all and port, canal and other waterway dues and pilotage fees rank only after salvage, which is an unsatisfactory situation, given that these services are provided to bring a salvage operation to a successful conclusion and often at high risk. The International Association of Ports and Harbors would submit that it is both logical and fair that in article 5 claims for the costs of wreck removal should be clearly stipulated with claims for salvage since both are closely linked.

(c) Compensation for damage caused to port works is similar in nature. For example, damage caused to swing bridges or lock gates can have severe consequences for port operation.

(d) Mention must be made of the unfortunately increasing number of cases of ships being immobilized in ports for technical, commercial, social, financial or legal reasons. Frequently such vessels are abandoned by their owners. Ports have to devote major and costly care over long periods of time to the preservation of such ships, often before their arrest and until their case is settled. The costs incurred should commence from the time of entry of the vessel into the port and be clearly stipulated, in article 11, paragraph 2, to ensure that they are paid first out of the proceeds of sale.

5. In all the various circumstances mentioned above port claims must be guaranteed, in the common interest, by high-ranking liens. This is the situation under the International Convention of 10 April 1926, which is currently in force. That Convention provides top-ranking liens in respect of port dues and for the cost of the preservation of the ship and a fourth ranking lien for the repair of damage. In addition, the Protocol of signature of this Convention contains a provision allowing each State the possibility to confer on its port authorities, if they have caused a wreck or other obstruction to navigation to be removed, or if they are creditors in respect of harbour dues, or for damage caused by the fault of the vessel, wreck or other property, the right to sell the same and to indemnify themselves out of the proceeds in priority to other claimants. Furthermore, the Convention stipulates, in article 2, that law costs due to the State and expenses incurred in the common interest of creditors in order to preserve the vessel or to procure its sale shall have a top-ranking lien (article 2.1). This latter provision should figure explicitly in the text of any new convention.

6. It would be regrettable if a new convention were adopted and entered into force which was less concerned with the rights of interests of ports. It would be regrettable:

- for ports themselves and their immediate communities or towns, as well as for the whole economy or the countries which they serve;

- for the economy of international shipping in general.

7. In conclusion, IAPH would submit the following requests to the Conference of Plenipotentiaries:

(a) that the rank of port liens for claims be improved and maintained at the level accorded in the 1926 Convention;

(b) that among these claims, those relating to wreck removal, the repair of damage to port works and equipment, and the care devoted to the preservation of the ship in a situation of negligence or abandon, should be explicitly enumerated;

(c) that the wording of article 5, paragraph 2, shall read "claims for salvage or wreck removal shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed".